

U.S. Application Serial No. 10/789,095
Attorney Docket: 710240-2039
Response to Office Action of December 28, 2005

REMARKS

Applicants respectfully request reconsideration and allowance of claims 1-67 in light of the above amendments and the following remarks.

Applicants respectfully traverse the rejection of independent claims 1, 25, 31, 56, 62 and 65 as being obvious over Gladfelter et al. (U.S. Patent No. 6,309,721) ("the '721 Patent") in view of Cook, II (US 2003/0012944) ("Cook"). Applicants have amended the independent claims above such that each provides for a "netting layer being biasable in at least one direction". The Examiner concedes the '721 Patent fails to disclose this limitation, and instead relies upon Cook to remedy this omission. However, Cook also fails to disclose, whether alone or in combination with the '721 Patent, a "netting layer being biasable in at least one direction" as provided for by all of the independent claims.

The Examiner relies upon the Cook reference's disclosure of "mesh material 5" for this limitation. This reliance is misplaced, however, as the "mesh material 5" of the Cook reference is not "biasable in at least one direction" as required by each of the claims. There is not one mention in Cook of the mesh material being biased or biasable. In fact, Cook discloses just the opposite by specifically stating that the material may be formed to take any "shape deemed necessary" (See paragraph [0014] of Cook). For this reason, the '721 Patent is not combinable with Cook because the '721 Patent does not suggest the teachings of Cook and Cook does not suggest the teachings of the '721 Patent. One of ordinary skill in the art would not look to the "mesh material" of Cook to modify the disclosure of the '721 Patent because the "mesh material" of Cook not only lack, but actually teaches against, a core principle of the '721 Patent, as discussed more fully below. The Examiner is using improper hindsight reasoning when attempting to combine these references because he is utilizing the teachings in the pending Application and applying them to the prior art references in order to conclude the pending claims are unpatentable.

Furthermore, even if combined, the combination of the '721 Patent and Cook would teach away from the claimed invention. Modifying the '721 Patent by replacing its disclosed "continuous

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"monofilament member" with the "mesh material" of Cook in the manner suggested by the Examiner would destroy a core principle of the '721 Patent, i.e., providing a resilient set to the protective sleeve. As discussed above, the "mesh material" of Cook is described as being able to take any "shape deemed necessary" (See paragraph [0014] of Cook). This is directly opposite of providing a resilient set as provided for by the '721 Patent, and teaches away from the invention as claimed by Applicants. For this reason, the '721 Patent is not combinable with Cook because the '721 Patent does not suggest the teachings of Cook and Cook does not suggest the teachings of the '721 Patent.

All of the independent claims in the present Application (claims 1, 25, 31, 56, 62 and 65) provide for a "netting layer being biasable in at least one direction" and, thus, are allowable for the reasons discussed above. The remaining claims depend, ultimately, on one of these independent claims and are allowable for the same reasons. The dependent claims distinguish over their parent and one another by reciting Applicants' invention in greater detail.

With regard to the provisional double patenting rejection, Applicants disagree with Examiner that claims 1-67 of the instant Application are not patentably distinct from claims 1-18 of Application No. 11/077,306. Similar to Cook and the '721 Patent discussed above, claims 1-18 of Application No. 11/077,306 do not provide for a "netting layer being biasable in at least one direction" as provided for by each of the present claims. This limitation renders the present claims patentably distinct from the claims 1-18 of Application No. 11/077,306. Therefore, Applicants respectfully request that the Examiner withdraw this rejection. Furthermore, because this is a provisional rejection as claims 1-18 of Application No. 11/077,306 have not yet been patented, Applicants reserve the right to take appropriate action, including but not limited to the filing of a terminal disclaimer, at a later date.

It is believed that this Application now is in condition for allowance. Further and favorable action is respectfully requested.

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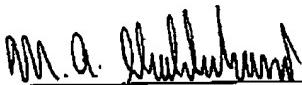
Applicants believe there are no fees due for this document, however, if any fees are due, the Patent Office is authorized to charge or refund any fee deficiency or excess to Deposit Account No. 04-1061 in the name of Dickinson Wright PLLC.

Respectfully submitted,

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